

**DEKALB COUNTY GRAND JURY PRESENTMENTS  
NOVEMBER-DECEMBER TERM, 2011**

TO THE HONORABLE JUDGES:

COURTNEY L. JOHNSON  
MICHAEL E. HANCOCK  
CLARENCE F. SEELIGER  
GAIL C. FLAKE  
GREGORY A. ADAMS  
CYNTHIA J. BECKER  
DANIEL M. COURSEY, JR.  
LINDA W. HUNTER  
MARK ANTHONY SCOTT  
TANGELA BARRIE

Of the Superior Court of DeKalb County, Georgia, Stone Mountain Judicial Circuit.

This Grand Jury, sworn in by the **Honorable Linda W. Hunter** in the DeKalb Superior Court on **November 8, 2011** respectfully submits the following presentments.

**INDICTMENTS**

This Grand Jury was presented with (XXX) cases during the **November-December 2011** term. Of these cases (XXX) True Bills and (XX) No Bills were returned. An additional (XXX) cases proceeded by Accusation.

**REQUEST FOR PUBLICATION**

Pursuant to O.C.G.A. § 15-12-80, we the presently constituted Grand Jury recommend to the **Honorable Mark Anthony Scott on behalf of Linda W. Hunter** that these general presentments be published in whole in the County Legal Organ.

The Grand Jury of the November-December 2011 term would like to thank and acknowledge District Attorney Robert D. James, his staff, and all of the testifying witnesses. The Assistant District Attorneys were, on the whole, well prepared and quick to spot errors, make appropriate changes to indictments, and respond to the Grand Jury's concerns on certain charges. Assistant District Attorneys Nicole Marchand and Don Geary were particularly helpful during our term.

We are most grateful for the assistance and guidance of Grand Jury Secretary, Jamita Vortice-Bowden. She was always responsive to our needs and requests and was instrumental in helping us resolve issues quickly and easily. We also thank Ms. Bowden for her assistance in securing the attendance of those that the Grand Jury requested to visit us.

#### **GRAND JURY SUMMONS SELECTION PROCESS**

We reiterate the recommendations of past Grand Juries that the Grand Jury selection process be more equitable and representative of the population of the County. We understand that the process is burdensome for all who are called for service, but the penalty for non-appearance must be significant and equally applied. It appeared that fewer than half of those called for our term appeared on selection day and this made it difficult to constitute a full Grand Jury when taking into account those who needed to defer or excuse themselves for valid reasons. The medical exemption form should be redone as it looks quite ragged from being photocopied so many times.

It would be helpful for planning purposes if the summons appeared in a more official looking envelope. It does not look like the regular jury summons and could be easily overlooked in the mail. We would also suggest that the summons be sent more than one month in advance of the beginning of the Grand Jury term. The summons should also lay out the valid reasons for deferral or excuse and explain the limit on deferrals to assist potential Grand Jurors in planning their schedules in anticipation of service.

We were all very frustrated with the error made in our swearing that required us to redo an entire week of work. According to O.C.G.A. 15-6-3 (37), the court terms of the Stone Mountain Judicial Circuit begin on the first Monday of January, March, May, July, September, and November. We were asked to report on Tuesday, November 1, but should

have first reported on Tuesday, November 8. While we are glad that the error was caught within the first week, limiting the number of cases that needed to be reheard, we strongly urge the Court to hold accountable those who made this error. In the future, those responsible for calling Grand Jurors should pay close attention to this issue to keep other Grand Juries from having the same problem. Perhaps the most frustrating result of the error was that the re-swearing left the Grand Jury with only 24 members, making it more difficult for the remaining Grand Jurors to be able to take breaks or excused absences and keep the minimum required number of jurors in the room at any one time.

### **GRAND JURY ORIENTATION**

Grand Jury orientation could have been more extensive. The process became easier and clearer over time, but we would have been well served to have had many of the procedural issues more thoroughly explained, including the breadth of the questions that we could and should ask. It would have been particularly helpful to have a session that highlighted the most important sections of the Grand Jury Handbook during the first session, before any cases were presented.

A more thorough discussion of the roles of the Grand Jury officers as well as policies for breaks and absences would also have been helpful. While we understand that most of the issues with absences and break management are to be handled within the Grand Jury and by the chosen officers, everyone needs to be reminded that Grand Jury service is inconvenient for all involved and no one should take advantage of the other members of the Grand Jury by leaving for the day without informing the Foreman or Secretary or taking inordinately long breaks. What constitutes actual attendance also needs to be addressed during orientation.

### **VISITORS AND EXCURSIONS**

#### **Gang and Drug Task Force**

We were provided with interesting presentations about the problem of gangs in DeKalb County and were educated on some of the issues that gangs raise in law enforcement. We also had a very valuable presentation on guns and drugs that are issues in DeKalb County. It was helpful to have this baseline, since we heard repeatedly about various gangs, drugs, and weapons throughout our service as Grand Jurors.

### DeKalb County Jail

We toured the DeKalb County Jail on November 17, 2011. We were provided with an overview of jail operations and received copies of the 2010 Annual Report. We were introduced to Sheriff Thomas Brown and many of his top deputies and jail officials. It appears that Sheriff Brown is a good steward of the limited funds available in the very tight county budget. We were impressed to hear of the jail's Triple Crown designation for accreditation from the Commission on Accreditation of Law Enforcement Agencies, American Correctional Association's Commission on Accreditation for Corrections, and the National Commission on Correctional Healthcare.

The jail appeared to be clean and well run and we were impressed with the healthcare and education available to inmates. We were also favorably impressed with the infection control measures followed by the jail staff to limit the transmission of communicable diseases within the incarcerated population. We were present during a disaster drill and it appeared that this exercise went well. We also felt safe throughout our visit.

The jail library appeared adequate for pleasure reading and we were reminded that the jail is always seeking donations of paperback books for pleasure reading. There was no law librarian available at the time of our visit. It was explained that the librarian is a civilian employee, but does not hold a degree in law or library science. The library staff member does have access to Lexis and Westlaw for fulfilling inmate requests. The print collection appeared adequate, but also appeared to consist mostly of federal materials, which may be unnecessary for county inmates. Also, it is unclear whether the electronic access available via the library staff members is duplicative of the print collection. It may be possible to economize by canceling print subscriptions that are unnecessary or duplicated within the Lexis and Westlaw contracts.

### Josiah V. Benator, Jr.

Mr. Benator, President of the DeKalb Grand Juror's Association, visited us on November 3, 2011. He explained the purpose of the Association and invited us to join if we are interested. He explained how the Association takes the recommendations from Grand Jury Presentments and attempts to help these recommendations come to fruition. Mr. Benator is truly dedicated to the Grand Jury process and should be commended.

#### DeKalb County Board of Equalization

We are concerned about the lack of geographic diversity within the county of the current membership of the Board of Equalization, as well as the seemingly “permanent” tenure of many current members. Although we understand that the state legislature has considered proposed legislation that would impose term limits on Board of Equalization tenure, such legislation has not yet been enacted and there is no guarantee that it will be enacted in the future. Additionally, in our view, the county should solicit a significantly larger number of new members each year until the county has a full slate of qualified and trained alternate members of the Board of Equalization. It is incomprehensible that the County would express concerns about the lack of potential and alternate members while at the same time willfully adhering to the “every 25<sup>th</sup> name” rubric to solicit new members. The County should move to an “every 8<sup>th</sup> name” rubric until this issue is satisfied. As a result of these concerns, we declined to approve the reappointments that were proposed to us. We understand that our decision will create administrative difficulties, but declining to approve the reappointment is the only measure available to us to register the depths of our concern. We urge the next Grand Jury term to follow our lead until a sufficient number of new members are solicited.

#### DeKalb County CEO Burrell Ellis

On December 8, 2011, Burrell Ellis, DeKalb CEO visited the Grand Jury, along with DeKalb COO Richard Stogner, DeKalb CFO Joel Gottlieb, DeKalb County Public Safety William “Wiz” Miller, and DeKalb County Chief of Staff Jabari Simama. They were joined by Assistant District Attorney Don Geary.

Our main line of questioning had to do with \$40 million of Parks, Greenspace, and Library bond funds reported by local media to be missing or inappropriately commingled with the County’s general operating funds. The process for performing yearly audits of County finances was explained by Mr. Gottlieb. We also learned about the Local Government Investment Pool (LGIP) which holds County funds when they are not required for day-to-day operations. We also heard about the limitations on the number of funds available to LGIP participants and that this has since changed, allowing DeKalb County to maintain separate accounts for general operating and bond funds.

We learned that the alleged missing funds were never missing, but were instead incorrectly entered into the accounting system. Through the explanations of Mr. Stogner, Mr. Gottlieb, and Mr. Ellis and the assurances of Mr. Geary about the District Attorney's investigation, it is our opinion that there was no wrongdoing and that no money was misappropriated or inappropriately commingled. We are also convinced that there are now appropriate controls in place to keep this issue from happening again.

#### DeKalb County School Superintendent

Current DeKalb County Schools Superintendent Dr. Cheryl Atkinson and former Interim Superintendent Ramona Tyson visited the Grand Jury on Thursday, December 15. Both were cooperative, but as the current and former administrators, they were unable to answer many of the questions we wanted answered. District Attorney Robert James joined us during the discussion.

Dr. Atkinson described her push for a complete reassessment of the job descriptions, actual job duties, and salaries of employees at the Assistant Principal level and higher within the school system by mid-January 2012. This will most likely lead to realignment of jobs within the school system and should help to limit the perceived top heaviness of the system's administration. This same process should be completed for all other school-based employees by mid-March 2012.

Ms. Tyson discussed the anti-nepotism policies in place within the school system and her suggestions to the Board for strengthening these policies as well as Board and staff conflict of interest policies adopted in 2010. She explained that public disclosure is required before the hiring of any family member of school system employees at the Cabinet level or above. She also described a new whistleblower policy assuring anonymity for those who choose to seek it. Ms. Tyson and Dr. Atkinson also described the new training that will be required throughout the system to ensure appropriate evaluation of employees and understanding of system policies.

When we asked about the policy for school system employees working other jobs we were told that while there is no specific policy restricting such work, all system employees are expected to perform only County work when on County time. Many nine-month school based employees have part time jobs during the summer. We were also assured that State

Senator Ronald Ramsey, who serves as Director of the system's Office of Internal Affairs is fully available to the system even while the General Assembly is in session. Both Dr. Atkinson and Ms. Tyson expressed their confidence in Mr. Ramsey.

We asked about the perception that system money may have been used to advocate for the most recent SPLOST. We were told that the school system is allowed to provide information about the SPLOST and urge county residents to vote in the election, but that they are not allowed to tell people how to vote. We were assured that all materials provided and speeches made by school system leaders were vetted and approved by the system's legal counsel, Sutherland Asbill & Brennan.

We asked about the current ban on marching band activities within the county in light of recent hazing allegations at Florida A&M University involving DeKalb County School System graduates. We were told that the matter is under investigation, as is the system's Music Director Don Roberts.

Dr. Atkinson explained that she is moving the school system toward zero-based budgeting and hopes to streamline the system's budget.

We asked about the recommendations by SACS for the system to remain accredited. Dr. Atkinson told us that they are working on the final two recommendations about improved strategic planning and better communication and reporting with the internal auditing process.

We asked about the lawsuit against Heery International, and whether the law firm retention agreement is, as Judge Seeliger called it, "unfair" to the County. Dr. Atkinson and Ms. Tyson referred us to the School Board.

A member of the Grand Jury brought up the issue of food service in school cafeterias. Dr. Atkinson assured us that all food is prepared in-house and that she will look into any issues regarding the quality and nutrition provided to students.

#### DeKalb County School Board

Mr. Thomas Bowen, chairman of the DeKalb County School Board, visited the Grand Jury on Tuesday, December 20, 2011. District Attorney Robert James joined us during the discussion.

We began the discussion by asking about the issues surrounding the recent search for a new superintendent. Mr. Bowen told us that it is unknown who leaked the details of the

contract negotiations with Lilly Cox, but that the leak was against board policy. After the leak and subsequent media coverage, Ms. Cox withdrew from consideration, although it is unclear that this was the cause of her withdrawal.

Mr. Bowen explained that the Board has requested and is receiving training and mediation through SACS. This training is intended to help the Board to work more closely together and better manage conflict. The training also covers the fiduciary duties of Board members to the County and School System and ethical responsibilities. Currently the harshest penalty that the Board can provide is censure and it cannot remove a member. Under current law the System must be placed under probation by SACS before any action can be taken to remove a Board member or mete out other penalties.

We asked Mr. Bowen about the perception of nepotism in the School System. He described that changes have been made since the administration of Dr. Lewis. Current Board policy requires that promotions and salary increases for family members of Cabinet level employees and above must be approved as separate agenda items.

We asked about Parent Centers and Family Service Coordinators. Mr. Bowen explained that the Centers are an attempt to make the System more parent friendly. He had no specific knowledge of the salaries paid to the Coordinators. We strongly recommend that the Board investigate this as a part of the ongoing survey of job descriptions, actual job duties, and salaries, and that real changes be made based on the findings of the study.

We strongly recommend that the aforementioned employment assessment lead to real changes and realignment within the School System.

We also asked about policies regarding outside employment for 12 month staff at the Director level and above. Mr. Bowen stated that he was unaware of any specific policy on outside employment. We strongly recommend that such a policy be put in place as soon as practical.

We questioned Mr. Bowen on the lawsuit against Heery International and whether aggressive pursuit of the lawsuit is in the best interest of the County. He explained the selection of counsel from his standpoint, and described the change from a fixed fee to a contingent fee agreement with counsel in 2009. We advised Mr. Bowen to retain independent counsel for any settlement negotiations and to seriously consider the terms of



engagement with existing counsel in light of Judge Seeliger's serious concerns that the lawsuit and fee arrangement are unfair to the County.

## **GENERAL CONCERNS AND SUGGESTIONS**

### **Recommendation for a Special Grand Jury**

Although we have received answers to questions posed to Dr. Cheryl Atkinson, Ms. Ramona Tyson, and Mr. Thomas Bowen, it is clear that the School System remains top-heavy and suffers from a perception of conflicts of interest and waste. The citizens of DeKalb County invest a significant portion of their tax dollars in the DeKalb County School System. The perceived effectiveness of the DeKalb County School System also has a significant impact on property values of all homeowners in DeKalb County. In addition, there is the greatest concern for the education of the children of DeKalb County. The DeKalb County School System has been declining in many rankings as compared to other Metro Atlanta school systems as well as various national evaluation methods. We recommend that a Special Grand Jury be convened to investigate the DeKalb County School Board. Our concerns include:

- Board actions that delayed and compromised the Superintendent hiring process for over 18 months. The school system was in turmoil with the former Superintendent removed from his position and he is currently under indictment. While we have no issue with the work and effectiveness of the Interim Superintendent, not having a permanent Superintendent in place for an extended period while the system was in turmoil and obviously needed significant improvements leads to questions about the DeKalb County School Boards effectiveness in meeting their sworn duty to the citizens of DeKalb County. In addition, certain aspects of the selection process were leaked to the media. The leaks had to come from a very limited number of persons who were mostly DeKalb County School Board Members. This leads to suspicion that certain Board Members were on purpose working to compromise the selection process to the detriment of the DeKalb School System and the Citizens of DeKalb County.
- Board influence in the hiring and personnel evaluation process. While it has been reported that the DeKalb County School Board and DeKalb County Superintendent

have started to put into place policies to limit inappropriate hiring and retention of personnel, it appears that there has been a long term culture of active or perceived influence of DeKalb County School Board Members on the hiring and retention of “friends and family”. Roles such as Parent Centers and Family Service Coordinators with what appear to be salaries out of line with other roles within the School System create concern about the hiring and retention process. While policies and procedures need to be put in place immediately to prevent issues in this area, we believe an investigation should be made to determine if past actions to hire and retain (protect) School System employees have taken place to the significant detriment to the Citizens of DeKalb County.

- Senior personnel employed in outside work that would impact their ability to perform their required duties. Currently there is a significant issue with the band program in the DeKalb County School System that has caused the temporary suspension of activities in this area. With limited research on the Internet, we were able to determine that the person responsible for this area is very involved in a variety of other business ventures. There is concern that there are persons of senior responsibility working for the School System that may be involved in other activities that would prevent them from fully executing their duties. We believe that it should be investigated if there are senior personnel with conflicts. The result of the conflicts could range from actual misuse of DeKalb County School resources by individuals not working on DeKalb County School Business while being paid to issues related to lack of supervision of programs along with lack of quality programs. Any of these issues would be of a significant detriment to the Citizens of DeKalb County.
- Use of DeKalb County School funds to promote the recent SPLOST referendum. The DeKalb County School System by law can educate DeKalb County Citizens about the SPLOST referendum but are not allowed to campaign for or try to influence the referendum results. The School System has a vested interest in the success of the SPLOST referendum. The School System participated in a number of meetings, presentations, and created brochures about the SPLOST referendum. We were told that these presentations and items were reviewed by Legal Counsel. However, there is significant judgment involved in determining what is educational versus what is

designed to influence the situation. Undue influence may be caused by only “educating” one side of the issues rather than a balanced approach. Significant review by independent citizens needs to take place to ensure that past and future DeKalb School actions related to SPLOST referendums are appropriate.

- Review if proper procedures were followed in hiring attorneys, deciding to file a lawsuit, and management of the lawsuit by the DeKalb County School Board, specifically, but not limited to, the case against Heery International. At this point, legal fees and expenses related to a law suit exceed by many magnitudes the original amount in dispute. Legal fees and related expenses come out of the operating funds of the DeKalb County School System. Consequently, funds ineffectively spent in this area deprive the DeKalb County School System of funds that could be used for instructional purposes. The Heery International law suit process should be reviewed to determine if the DeKalb County School Board has met their fiduciary duty to the Citizens of DeKalb County with the management of expenditures in this area. The overall Legal Procedures should be reviewed to ensure that policies and practices are in place to prevent these kinds of issues in the future.

### HVAC

This next topic should be an embarrassment to the County. Prior Grand Juries have made this comment, but should never have to again. The Grand Jury room is far too cold. The HVAC issues in the room must be addressed immediately to make it comfortable for grand jurors, prosecutors, and witnesses. The temperature in the room is noticeably colder than the surrounding areas on the 7<sup>th</sup> floor. It has been noted by nearly every prosecutor and witness who has presented before us. Grand jury members, who must sit in the room for hours at a time, have worn gloves, coats, and hats while in the Grand Jury room. This is unacceptable. Please fix it before the next Grand Jury convenes.

### Consistency among Assistant District Attorneys

Each ADA has a distinctive style for presenting indictments. While this is reasonable to expect, and adds interest to the day, it was occasionally distracting. We expect each ADA to read or paraphrase each charge, but the ADA should not read each word of the boilerplate

language included in each count, particularly when the charges are repetitive. On the other hand, some ADA's have dispensed with reading the charges at all, leaving the Grand Jury insufficiently informed. The law students who presented indictments did an excellent job and were coached only when needed by their assigned ADAs.

#### Preparation of witnesses

We have noticed that many of our witnesses appear unprepared to present evidence. Many seem to have received the case files moments before entering the room and have trouble providing the evidence to the Grand Jury. Some witnesses, especially the DeKalb County District Attorney's investigators are excellent story tellers and make it pleasant to hear them, even when the facts are uncomfortable. Many of the officers who actually worked the cases are also good at relating evidence. Others could use assistance in learning to tell a story that is easily understood and followed, while also containing all facts pertinent to the charges. Investigators Tracey Enderson, Sweden Bailey, Sam Washington, and many of the undercover narcotics officers were especially good witnesses and it would be helpful if they could assist in training others to give good evidence.

#### Microwave

There should be a microwave in the Grand Jury room. One was promised at the beginning of the term and it has not appeared. This would make jurors taking lunch breaks much more convenient.

#### Light above the Grand Jury room entrance door

It would be helpful to have a lit Do Not Enter sign above the Grand Juror's entrance to the Grand Jury room. This would help to keep returning grand jurors from knocking during presentation of cases. This light should be visible from the Grand Jury Member Lounge or an additional light should be in that room so that jurors will know when they can return to the room.

### Keeping the day moving

Sometimes we needed to prompt the prosecutors and witnesses to enter the Grand Jury room, even after the Do Not Enter light was turned off. In the interest of everyone's time we ask that those in the waiting area pay close attention to the light.

### Microphones

The HVAC system in the room is very loud (because it is working too hard), so the microphones are vital for both the prosecutor and witness. We had many problems with the microphones not working, making it difficult to hear. Please look into this issue and correct it for the next Grand Jury term.

### Respect for Deliberations

Loud conversation and laughter by waiting witnesses and ADAs in the hallway outside the Grand Jury room is distracting.

### Water Cooler

Please fix the water cooler so that it dispenses both hot and cold water. Otherwise, please provide a source of hot water for those Grand Jury members who would prefer to have tea or other hot beverages beyond coffee.

### Appreciation to the Grand Jury

As a group (and particularly as officers of the Grand Jury), we would like to thank one another as members of the Grand Jury for an extraordinarily positive experience as citizens. We will never forget the integrity and generosity – and commitment to citizenship – exhibited by these good people, at considerable personal sacrifice. We are grateful to our new friends.

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**LIZANNE THOMAS, FOREMAN**

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**DIANE L. PRUCINO, ASST. FOREMAN**

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**SARAH K. C. MAULDIN, SECRETARY**

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**PAMELA K. SKAFF, ASST. SECRETARY**

**WENDY BAKER  
JAZMIN BRATHWAITE  
FRANK CASTELLOW, JR.  
BARRY DEUTSCH  
SARAH DOWDEY  
MICHAEL DUFFEE  
AMAN GUIRBO  
MICHAEL HOPKINS  
KAREN INNISS  
PATRICIA JOHNSON  
LEN JONES  
CHRISTINE JOREL  
GERALD MILLER  
KARLA RIKER  
VIVIAN K. ROBINSON-O'NEAL  
JOHN H. SANDERS  
MUHAMMAD SHAHJAHAN  
RHONDA K. TUCKER  
VICKIE K. WARE  
ELIZABETH T. WILLIAMS**

**ORDER**

The within and foregoing presentments have been filed in open Court,

IT IS HEREBY ORDERED that said presentments be filed and published, as requested, in the County Legal Organ.

SO ORDERED this 29TH day of DECEMBER, 2011.

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MARK ANTHONY SCOTT, JR., JUDGE  
ON BEHALF OF LINDA W. HUNTER  
DEKALB SUPERIOR COURT  
STONE MOUNTAIN JUDICIAL CIRCUIT

ACKNOWLEDGED;

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ROBERT D. JAMES  
DISTRICT ATTORNEY